(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 5049 /2004

PETITIONERS : 1. Gulab Chand, aged 48 years,
S/o Ramaoutar,
2. Karam Chand, aged 45 years,
S/o Ramaoutar,
3. Shiv Chand, aged 42 years
S/o Ramaoutar,
4. Subhash Chand, aged 40 years
S/o Ramaoutar,
All by caste Cherwa, R/o village Dandkarwa, Tahsil Pratappur, Distt. Sarguja (C.G.)

29 5032/04 Regd. by Shri R.H. Prajapati
P.R. No.
Presented
dated 23/12/04

VERSUS

RESPONDENTS : 1. Bundhani Wd/o Sukhnandan
W/o Shridayal, aged 70 years,
R/o village Dandkarwa, Tahsil Pratappur, Distt. Sarguja (C.G.)
2. State of Chhattisgarh
Through Collector
Sarguja (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

(39)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.5049 of 2004

Gulab Chand and others

Vs.

Bundhani and another

O R D E R

Post for 10.05.2005

Sd/-
Sunil Kumar Sinha
Judge

Noted
(D. N. Prajapati)
Adv.

Noted
(Parag Kotecha)
Adv.

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.5049 of 2004

Gulab Chand and others

Vs.

Bundhani and another

Shri D.N.Prajapati, counsel for the petitioners.
Shri Rahul Mishra, counsel for respondent no.1
Shri Yashwant Singh, Govt. Advocate for respondent no.2

ORDER
(10.05.2005)

Sunil Kumar Sinha, J,

By this writ petition filed under Article 227 of the Constitution of India, the petitioners who are the plaintiffs, have challenged the legality and validity of the impugned order dated 09.12.2004 (Annexure P-1) passed in Civil Suit No.10-A of 2004 by the Civil Judge, Class-II, Pratappur, District Sarguja (C.G) by which he has rejected the application for amendment of the plaint filed under order VI Rule 17 of the Code of Civil Procedure.

(2) The brief facts are that the plaintiffs filed the suit for declaration of title and also for permanent injunction in relation to the suit lands described in *Schedule A-1* of the plaint. The reliefs claimed in the plaint are that the plaintiffs

be declared the absolute owners of the aforesaid suit lands. In the alternative it is also prayed that if the claim of the plaintiffs is not established on successory rights they be declared the owners as a result of perfecting their title by way of adverse possession. Further a decree for permanent injunction should also be passed in their favour restraining defendant no.1, her servants or agents from interfering with the possession of the plaintiffs. This suit was filed on 26.02.2004 to which a written statement was filed on 13.7.2004.

(3) On 08.12.2004 the plaintiffs filed an application for amendment of the plaint under Order VI Rule 17 of the CPC. The plaintiffs sought substantial amendment that during the pendency of the suit the defendant with the help of her family members dispossessed the plaintiffs from the suit lands in the month of October 2004. Accordingly, they proposed amendment in valuation column, the column for the court fee etc., and ultimately a relief of possession was also sought to be added. The learned trial Judge, after hearing the parties dismissed this application by the impugned order dated 09.12.2004. It is against this order, the plaintiffs have filed this writ petition.

(4) I have heard learned counsel for the parties and have also perused the records.

(5) Learned counsel for the petitioners submits that since a subsequent event took place during the pendency of the suit, therefore, it was incumbent upon the trial court to allow such amendment based on the subsequent event so as to reach the finality in the *lis* between the parties regarding the controversy in relation to the suit lands.

(6) On the other hand, learned counsel for respondent no. 1 opposes the said argument.

(7) It is a settled principle of law that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. This is the main provision given under Rule 17 of Order VI C.P.C. A proviso has also been added to this rule that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

(8) The main provision of Rule 17 of Order VI as well as the proviso to the aforesaid rule make it clear that normally the amendments are to be allowed unless it appears on record that the party who could have raised the matter before the

commencement of the trial has failed to do so inspite of due diligence. The words used by the Legislature clearly indicate that an amendment based upon subsequent event is never prohibited because admittedly, the same being the subsequent event it could not be raised before the commencement of the trial.

(9) The Hon'ble Apex Court in the matter of ***Pankaja and another -Vs- Yellappa (dead) by LRs. And others reported in (2004) 6 SCC 415*** held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no strait-jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual back ground of the case.

(10) If we examine the present matter in the back ground of the above law, it would appear that the dispossession as sought to be pleaded by the plaintiffs is a subsequent event to the filing of the suit. In a suit for a declaration of title and permanent injunction, if the plaintiffs are dispossessed during the pendency of the suit after commencement of the trial and they shall not be allowed to incorporate the amendment in the pleading and to claim the relief of possession also, then it would certainly not sub-serve the ultimate cause of justice and will also not avoid the multiplicity of the litigation which is one

of the principles underlying the provisions of Order VI Rule 17 C.P.C.

(11) In the opinion of this Court, the trial Court committed an error of law by rejecting such application for amendment of pleadings which sub-serves the ends of justice and is necessary for finally adjudicating the rights of the parties to avoid the multiplicity of litigations. The action of the Court also goes against the provisions of Order II Rule 2 (1) C.P.C., which indicate that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Here, if the plaintiffs are not allowed to make the claims in relation to possession, then, even in case of passing of decree in their favour in relation to the declaration of title, they will not be able to enjoy the possession of the suit lands unless such claim is further made and decreed in their favour.

(12) For the reasons stated above, the impugned order is set aside. The amendment application filed by the plaintiffs is allowed subject to the costs of Rs.200/-. The plaintiffs shall incorporate the amendment within a period of one month from today after payment of cost before the trial Court. The trial Court thereafter will give opportunity to the defendants to file consequential amendment and dispose of the suit in accordance with law. The petition is allowed.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/